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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

James J. Valentino

202 434 7300
202 434 7400 fax

Direct dial 202 434 7363
jjvalentino@mintz.com

RECEIVED

May 14, 2001

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

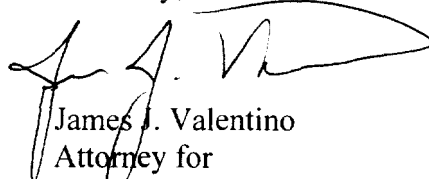
Magalie Roman Salas
Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., TW-B204
Washington, D.C. 20554

**RE: CC Docket No. 01-100:/Application of Verizon New York, Inc. for Authorization to
Provide In-Region, InterLATA Services in Connecticut**

Dear Ms. Salas:

Attached please find the original and four copies of a letter sent by Chérie R. Kiser of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. to Ms. Dorothy Attwood, Chief of the Common Carrier Bureau, on behalf of Cablevision Lightpath - CT, Inc. ("Lightpath"), pursuant to the Commission's April 23, 2001 Public Notice (DA 01-1063). This letter serves as Lightpath's comments to Verizon New York, Inc.'s application for authorization under section 271 of the Communications Act, to provide in-region, interLATA service in Connecticut.

Sincerely,



James J. Valentino
Attorney for
Cablevision Lightpath -CT, Inc.

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Washington Boston New York Reston New Haven

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Chérie R. Kiser

202 434 7300
202 434 7400 fax

Direct dial (202) 434-7325
crkiser@mintz.com

May 14, 2001

Ms. Dorothy Attwood
Chief, Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.

Re: CC Docket No. 01-100: Application of Verizon New York Inc.
for Authorization to Provide In-Region, InterLATA Services in Connecticut

Dear Ms. Attwood:

Cablevision Lightpath - CT, Inc. ("Lightpath"), through its attorneys and pursuant to the Commission's Public Notice,¹ hereby submits this letter regarding Verizon New York, Inc.'s ("Verizon's") application for authorization under section 271 of the Communications Act, to provide in-region, interLATA service in Connecticut. Lightpath has made a substantial investment to become a full service facilities-based competitive local exchange carrier ("CLEC") that currently provides basic and advanced telecommunications services to business customers in Verizon's Connecticut service area. Lightpath also provides these services to business and/or residential customers located in other portions of southern Connecticut, Long Island, New York City, and Westchester County in New York, and northern New Jersey. Based on its experience in the local telecommunications marketplace, including in New York, where Verizon has received approval to enter the interLATA market, Lightpath herein raises two issues that are paramount to the development of local competition and must be considered in reviewing Verizon's Connecticut application. Until these issues are resolved in a procompetitive manner, Verizon should not be permitted to gain approval to provide in-region, interLATA service in Connecticut.²

¹ *Comments Requested on the Application by Verizon New York Inc. for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of Connecticut*, CC Docket No. 01-100, Public Notice, DA 01-1063 (rel. Apr. 23, 2001).

² Given that Verizon committed to such appropriately procompetitive requirements in New York, it is reasonable to expect Verizon to adhere to the same open market conditions in Connecticut, which Verizon has repeatedly stated is an extension of its New York service area. *Application by Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., and Verizon Select Services Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut*, CC Docket No. 01-100, Application by Verizon New York for Authorization to Provide In-Region, InterLATA Services in Connecticut, at 8, 17 (filed Apr. 23, 2001) ("*Verizon Connecticut 271 Application*").

First, procompetitive interconnection agreements are critical to a CLEC's ability to compete in local markets. Notwithstanding this fact, CLECs enter negotiations for interconnection agreements at a significant disadvantage, as the bargaining power in such negotiations is disproportionately in favor of the incumbent telephone company. As Chairman Powell has recently recognized, CLECs "have been stymied by practices of incumbent local exchange carriers [such as Verizon] that appear designed to slow the development of local competition."³ Lightpath has encountered these practices first hand and on multiple occasions in its interconnection agreement negotiations with Verizon in Connecticut (and elsewhere).

Most recently in Connecticut, Verizon has forced Lightpath to expend significant time and resources in an interconnection agreement negotiation even though Lightpath had offered to streamline the process by either: (1) modifying the parties' existing Connecticut interconnection agreement in order to more closely mirror the interconnection agreement Lightpath previously had renegotiated with Verizon in New York; or (2) renewing the Parties' existing Connecticut interconnection agreement. Despite Lightpath's willingness to push back arbitration deadlines in an effort to reach a voluntarily negotiated agreement, Verizon continually stalled negotiations or came to the bargaining table ill-prepared to negotiate in good faith for over a year. After countless efforts to negotiate a renewal of its existing interconnection agreement with Verizon, Lightpath was forced to ask Connecticut's Department of Public Utility Control ("DPUC") to arbitrate the interconnection agreement. Finally, nearly a year and a half after Lightpath had formally requested to renegotiate the terms of its existing interconnection agreement with Verizon, the DPUC issued an arbitrated decision that found for Lightpath on *every issue* before the arbitrator.⁴

This long and costly process could have been easily avoided. Given that Lightpath had already spent significant sums to secure its initial interconnection agreements, it seems counter to a procompetitive regime to require the resources and capital to be expended again if a CLEC seeks to simply renew the current interconnection agreement. The Commission should place the burden of proof on Verizon to show that renewing an interconnection agreement with a CLEC is not reasonable. This requested action is modeled after a similar commitment that Verizon made in New York, where it agreed to renew any interconnection agreement with a CLEC.⁵ Such action would serve to ensure that CLECs are able to secure procompetitive interconnection agreements on a streamlined basis and would prevent Verizon from strong-arming CLECs into unnecessary and costly interconnection negotiations when the CLECs merely seek to maintain the *status quo*.

Second, Lightpath's experience in the local telecommunications market has reinforced the importance of a comprehensive Performance Assurance Plan ("PAP"). Once the incentive

³ Letter from Michael K. Powell, Chairman, Federal Communications Commission, to the Leaders of the Senate and House Commerce and Appropriations Committees (May 4, 2001).

⁴ See *Petition of Cablevision Lightpath - CT, Inc. for Arbitration*, Docket No. 00-10-22, Decision (Apr. 11, 2001).

⁵ See *NYPSC Case No. 97-C-0271, Petition of New York Telephone Company For Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996* ("NYPSC 271"). Hearing Transcript of Mr. Paul Crotty, at 4215 (August 31, 1999) (attached as Attachment I).

for gaining interLATA authority is gone, performance standards and self-executing financial remedies for nonperformance are simply the most effective incentives for Verizon to provide intercarrier services to CLECs in a timely fashion. The Commission has previously embraced this concept, stating that the examination of a state-specific PAP is key in determining “whether [performance measurements] fall within a zone of reasonableness, and are likely to provide incentives that are sufficient to foster post-entry checklist compliance.”⁶ As the Commission has recognized, it is imperative that the incumbent applicant demonstrate that the performance measures in its PAP provide a “benchmark” that “generates results that are meaningful, accurate and reproducible” so that CLECs and regulators can measure performance over time to detect and correct any degradation of service provided by the incumbent.⁷

In the present instance, the proposed PAP for Connecticut⁸ should be modified to ensure that adequate incentives exist for Verizon to meet performance standards. The primary purpose of adopting performance standards and remedies is to create proper incentives for Verizon to perform at a level that allows CLECs to provide an acceptable service quality level to its customers. In practice, these incentives should induce Verizon to provide performance at such a level that it will not be forced to pay any remedies. Verizon’s proposed caps on remedies are too low to create an effective incentive after interLATA authority is granted. Allowing such caps will enable Verizon to engage in simple cost-benefit analyses to determine whether the benefits derived from maintaining its monopoly position outweigh the costs of providing modest bill credits or other capped payments to CLECs, rendering the performance incentives meaningless.⁹

The adoption of CLEC-specific, incident-based remedies for performance failures would resolve this issue most effectively. Such a remedy for each instance of poor performance mirrors that of a competitive free market. For example, when a company fails to show up for a scheduled appointment with a customer, there is a cost associated with that performance failure, either by losing that customer or otherwise. Significantly, in New York, Verizon committed, in its Pre-Filing Statement, to accept the performance remedies in its existing interconnection agreements as a non-negotiable component of future interconnection agreements.¹⁰ Moreover, proposed performance plans for Verizon in the states of New Jersey and Virginia would apply

⁶ *Application by Bell Atlantic New York for Authorization to Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd 3953, ¶ 433 (1999); see also *Joint Application by SBC Communications et al. for Authorization to Provide In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order, ¶ 273 (rel. Jan. 22, 2001) (“*Kansas/Oklahoma 271 Order*”).

⁷ *Kansas/Oklahoma 271 Order*, ¶¶ 275-278.

⁸ *Verizon Connecticut 271 Application*, at App. F.

⁹ Simply put, Verizon likely would view capped remedies as a cost of doing business. Likewise, caps would eliminate any incentive to improve performance in any specific month or year where the cap has already been reached. Once the cap has been reached, the incentive to prevent further derogation of service is eliminated.

¹⁰ NYPSC Case No. 97-C-0271, *Petition of New York Telephone Company For Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996*, Pre-filing Statement of Bell Atlantic-New York at 2, April 6, 1998 (“Pre-Filing Statement”) (attached as Attachment 2).

CLEC-specific, incident-based remedies, and any Connecticut plan for Verizon should do likewise.¹¹

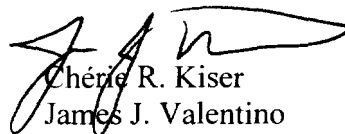
While Lightpath disagrees with the concept of caps on remedies generally, the “scaled-down” caps proposed for Connecticut by Verizon are unquestionably too small to create any incentive for Verizon to meet performance standards. Although the proposed amounts at risk may be “proportional” to amounts at risk under its New York PAP, these caps are so low as to negate the incentives for Verizon to comply with the standards. Verizon’s poor performance immediately following its section 271 authorization in New York should serve as a valuable lesson that the proper incentive and continued monitoring of Verizon’s conduct is crucial to continued local competition. Poor performance levels in New York forced the New York Public Service Commission and this Commission to require Verizon to make substantial remedy payments that included and went beyond those remedy payments already provide for under the New York PAP, and subjected Verizon to additional liability for future performance failures.¹² This experience is instructive to the setting of remedies in future situations, such as this proceeding, and thus the remedies in Connecticut should be proportionally greater than the remedies under Verizon’s New York PAP.

¹¹ *New Jersey Board of Public Utilities’ Investigation Regarding the Status of Local Exchange Competition in New Jersey*, NJ BPU Docket No. TX98010010, Proposed Verizon Performance Plan for the State of New Jersey (filed Aug. 18, 2000); *Establishment of a Collaborative Committee to Investigate Market Opening Measures*, Va. SCC Collaborative Committee Case No. PUC000026, Proposed Verizon Performance Plan for the State of Virginia (filed Aug. 2, 2000). In response to Verizon’s New Jersey filing, New Jersey BPU Staff proposed its own plan providing for CLEC-specific, incident-based performance remedies. *New Jersey Board of Public Utilities’ Investigation Regarding the Status of Local Exchange Competition in New Jersey*, NJ BPU Docket No. TX98010010, Staff Proposal, Verizon Incentive Plan for the State of New Jersey (filed Oct. 3, 2000).

¹² See *Complaint of MCI WorldCom, Inc. Against Bell Atlantic-New York Concerning Billing Completion Notices, Firm Order Commitments, Acknowledgements and tracking Numbers*, Case Nos. 00-C-0008, 00-C-0009, 99-C-0949, Order Directing Market Adjustments and Amending Performance Assurance Plan, at 3-4 (Mar. 23, 2000); *Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, Acct. No. X32080004, FCC 00-92 (rel. Mar. 9, 2000) (adopting a Consent Decree, under which Verizon agreed to contribute \$3 million to U.S. Treasury, and that Verizon is subject to additional contributions of \$4 million for two consecutive weeks of sub-standard performance; \$8 million for three consecutive weeks of sub-standard performance; and \$12 for four consecutive weeks of substandard performance).

Lightpath's experience in the marketplace strongly suggests that a streamlined process for renewal of interconnection agreements and comprehensive performance standards and financial remedies are vital to the development and continuation of meaningful competition in the local telecommunications market in Connecticut. Therefore, in order to ensure that the Connecticut local telecommunications marketplace is irreversibly open to competition, Verizon should step up and make the same commitments it has made in New York regarding the renewal of existing interconnection agreements and the provision of a meaningful PAP similar to that proposed in Virginia and New Jersey prior to considering approval of Verizon's application.

Sincerely,

A handwritten signature in black ink, appearing to read "Cherie R. Kiser". The signature is stylized with a large, sweeping "C" and a long horizontal stroke at the end.

Cherie R. Kiser
James J. Valentino
Attorneys for
Cablevision Lightpath - CT, Inc.

cc: Attachments

ATTACHMENT 1

1 NEW YORK STATE PUBLIC SERVICE COMMISSION

2
3 IN THE MATTER OF

4 Case 97-C-0271 - Petition of New York Telephone
5 Company for approval of its
6 Statement of generally available terms and conditions
7 pursuant to Section 252 of the Telecommunications Act
8 of 1996 and Draft Filing of Petition for InterLATA
9 Entry Pursuant to Section 271 of the
10 Telecommunications Act of 1996.

11 MINUTES OF AN ORAL ARGUMENT held at the

12 Legislative Office Building, Hearing Room B, The
13 Hamilton Room, Albany, New York, on Tuesday, the 31st
14 of August, 1999, commencing at 9:00 a.m.

15 BEFORE: Maureen O. Helmer,
16 Chairman
17 Eleanor Stein,
18 Administrative Law Judge
19 Janet Deixler,
20 Director of Communications
21 Lawrence Malone,
22 General Counsel

23 APPEARANCES:

24 For NEW YORK STATE DEPARTMENT OF
PUBLIC SERVICE STAFF:
Three Empire State Plaza
Albany, New York, 12223
By: ANDREW M. KLEIN, Counsel

1 a very generous offer.

2 CHAIRMAN: You said you dropped the glue
3 fee recently?

4 MR. CROTTY: Yes. We filed the final legal
5 arguments on August 17th. It was footnote 36, I
6 believe.

7 MR. MALONE: Mr. Crotty, you said that you
8 feel you met all the commitments in the prefiled
9 statements.

10 One of the comments at page two provides
11 that you will offer competitors performance
12 standards and remedies in interconnection
13 agreements at least equivalent to those offered
14 in the current ones.

15 Do you feel you met that criteria?

16 MR. CROTTY: Yes, because the way we read
17 the last full paragraph on page two of the
18 prefiling statements, we are committed to
19 offering the terms and conditions that exist in
20 existing interconnection agreements.

21 As we bargain and the other party to the
22 interconnection agreement wants to change the
23 terms and conditions, we feel free to change the
24 terms and conditions. We can't be put into a

1 negotiated box to say certain conditions aren't
2 going to change.

3 If another party to an interconnection
4 agreement wanted to extend the agreement, we
5 would be prepared to extend the agreement to
6 live up to the commitments we made on page two
7 of the prefiling statement.

8 Another thing in the prefiling statement
9 was the backsliding plan supervised by the
10 Public Service Commission which mandates price
11 discounts when our wholesale services do not
12 meet tough standards. And the Commission has
13 entered an order yesterday for notice of
14 proposed rule making on that to give teeth to
15 the backsliding.

16 The final thing in the prefiling statement
17 that's most important was we had agreed to an
18 independent third party test of our OSS, our
19 operating support system. That test was to be
20 conducted by an independent person selected by
21 the Public Service Commission, KPMG, and Hewlett
22 Packard.

23 And the test of our OSS turned out to be
24 really an end to end test. All of our systems

ATTACHMENT 2

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

In the Matter of
Petition of New York Telephone Company for
approval of its statement of generally available
terms and conditions pursuant to Section 252
of the Telecommunications Act of 1996 and
Draft Filing of Petition for InterLATA Entry
pursuant to Section 271 of the
Telecommunications Act of 1996.

Case 97-C-0271

PRE-FILING STATEMENT OF BELL ATLANTIC-NEW YORK

April 6, 1998

This "Pre-filing Statement" sets forth additional commitments¹ that New York Telephone Company, doing business as Bell Atlantic-New York (Bell Atlantic-NY or the Company), will make to the Federal Communications Commission (FCC) in connection with an application for long distance relief pursuant to Section 271 of the Telecommunications Act of 1996. Bell Atlantic-NY requests that the Chairman of the New York Public Service Commission (Public Service Commission) indicate whether, assuming Bell Atlantic-NY meets each milestone listed in Appendix 1 and discussed below,² it will issue a positive recommendation on the Bell Atlantic-NY filing to the FCC.³ Bell Atlantic-NY recognizes that the Public Service Commission will monitor compliance with each milestone and that a commitment to issue a positive recommendation would be subject to Bell Atlantic-NY satisfying all milestones to the Commission's satisfaction.

If Bell Atlantic-NY receives authority to provide interLATA services pursuant to the granting of an application under Section 271, the Company will keep the commitments set out herein, unless they are found to violate law by any court of competent jurisdiction. If the Chairman of the Public Service Commission, pursuant to Section 12 of the Public Service Law, other member of the Public Service Commission, or the Public Service Commission as a whole

¹ Unless modified herein, the initial commitments found in the company's Draft Application for InterLATA Authority, filed February 14, 1997, and Supplemental Petition, filed November 6, 1997, remain in effect.

² As a sign of good faith, Bell Atlantic-NY has, in fact, begun many of the steps discussed below.

³ These commitments do not bind any other Bell Atlantic operating telephone company in any other State.

support Bell Atlantic-NY's Section 271 petition, such support does not, in any way, waive or abdicate their powers or responsibilities under state or federal law.

This document also describes a series of significant steps that Bell Atlantic-NY has taken to (1) resolve concerns raised in reaction to the Company's earlier filings; and (2) further open the New York market to competition.

In addition, until such time as the Public Service Commission determines they are no longer necessary, where an existing interconnection agreement with a Competitive Local Exchange Carrier (CLEC) in New York State incorporates performance standards and remedies, such standards and remedies will not be unilaterally withdrawn by Bell Atlantic-NY. Such standards and remedies will continue to be offered by Bell Atlantic-NY in subsequent negotiations with those CLECs upon expiration of the existing agreements and similarly will be negotiated in good faith with other CLECs who request negotiation of such terms and conditions.

Finally, Bell Atlantic-NY acknowledges that any CLEC support of this document, like Bell Atlantic-NY's commitments herein, is based on its totality and on the specific circumstances in New York State. Such support cannot be cited as precedential in any other jurisdiction.

I. ACCOUNT SERVICING

Both Bell Atlantic-NY and the CLECs are served by having a clearly defined understanding of Account Manager responsibilities. As a result, the company will develop a comprehensive account management guide, describing the managers' roles and responsibilities. Volume I of the CLEC Handbook will be supplemented through the insertion of a summary of

CERTIFICATE OF SERVICE

I, Jonathan P. Cody, hereby certify that on this 14th day of May 2001, I caused true and correct copies of the foregoing Letter from Cablevision Lightpath - CT, Inc. to be hand-delivered or mailed to the following persons:

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-B204
Washington, D.C. 20554

ITS
1231 20th Street, N.W.
Washington, D.C. 20036

Kyle Dixon, Legal Advisor
Office of Chairman Powell
Federal Communications Commission
445 12th Street, S.W., Room 8B201
Washington, D.C. 20554

Jordan Goldstein, Legal Advisor
Office of Commissioner Ness
Federal Communications Commission
445 12th Street, S.W., Room 8B-115
Washington, D.C. 20554

Samuel Feder, Legal Advisor
Office of Commissioner Furchtgott-Roth
Federal Communications Commission
445 12th Street, S.W., Room 8A-302
Washington, D.C. 20554

Sarah Whitesell, Legal Advisor
Office of Commissioner Tristani
Federal Communications Commission
445 12th Street, S.W., Room 8C-302
Washington, D.C. 20554

Dorothy Attwood, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5C-450
Washington, D.C. 20554

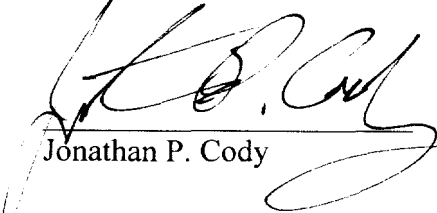
Janice Myles
Common Carrier Bureau
445 12th Street, S.W., Room 5-C327
Washington, D.C. 20554

Mark L. Evans
Kellogg, Huber, Hansen, Todd &
Evans, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036

Joshua Walls
U.S. Department of Justice
Antitrust Division, TTF
1401 H Street, N.W.
Suite 8000
Washington, D.C. 20530

Michelle Carey
Chief, Policy and Program Planning Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20036

Louise Rickard
Executive Secretary
Connecticut Dept. of Public Utility Control
10 Frankline Square
New Britain, CT 06051



Jonathan P. Cody